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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9642 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GIRIDHAR ALIAS RAJESH MAVJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner

MR AJ DESAI, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 22/02/2000

ORAL JUDGEMENT

Heard learned advocate Ms. Suman Pahwa assigned by Legal Aid, for the petitioner and learned A.G. P. Mr. A. J. Desai for the respondents Nos. 1, 2 and 3.

1. The detention order dated 11.3.1999 passed by the respondent No. 2, Commissioner of Police, Ahmedabad, in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present proceedings under Article 226 of the Constitution of India.

2. The grounds of detention served upon the detenu under Section 9(1) of the "PASA", interalia indicate that the petitioner is involved in five criminal cases, three of which are registered at Shahibaug Police Station and other two cases are registered at Madhavpura Police Station in between 23.12.1998 to 9.3.1999. The offences alleged against the petitioner are offences punishable under Sections 457-380, 454-457-380, 454-457 read with 114 of IPC and 457-380 read with 114 of IPC. respectively.

The grounds further indicate that two witnesses on assurance of their anonymity have given statements dated 10.3.1999, stating the alleged incident dated 26.1.1999 and 28.1.1999 respectively.

3. That on the basis of above stated material, the respondent No. 2 as Detaining Authority has come to the conclusion that the detenu is a "dangerous person " within the meaning of Section 2(c) of "PASA". That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and thereby, in order to prevent the petitioner from continuing his such activities, the impugned order is passed.

4. The learned advocate appearing for the petitioner has assailed the impugned order on numerous grounds. It has been contended at the Bar on behalf of the petitioner that the impugned order suffers from vice of non application of mind in as much as the detenu was in judicial custody since 23.2.1999 in respect to all the five cases in which he is involved and registered at Madhavpura Police Station and Sahibaug Police Station respectively. That the statements of anonymous witnesses disclose the incidents which were alleged to have taken place, and both are in respect to possessing ornaments, which were suspected to be stolen and the detenu had forcibly asked the person to advance money on the same.

That the grounds of detention do not disclose any activities in immediate past or proximate in time from which a rational conclusion could be drawn about the propensity of the detenu to indulge into such prejudicial activities. That in the absence of any material stated in the grounds of detention, there are no facts from which a reasonable conclusion could be drawn that the detenu / petitioner is likely to be released on bail and having been released on bail, he is likely to continue his anti-social activities.

5. Learned AGP Mr. A.J. Desai has vehemently objected the contentions urged on behalf of the petitioner and has stated that the order of detention passed against the person, who is already in the custody can not be said to be invalid and that the Detaining Authority was alive to the fact and has held in the last but one paragraph of the grounds of detention that the detenu might apply for bail and is likely to be released on bail and having got himself released on bail, is likely to indulge in the anti-social activities.

6. That in the matter of Rameshwar Shaw Vs. District Magistrate Burdwan , reported vide 1964, SC, 334, the Constitutional Bench has stated the proposition of law, while holding that the detention order passed against any person, who is in custody per se, is not invalid. However, the Detaining Authority has to makes it apparent in the grounds of detention the fact on which, the subjective satisfaction has been formed that person is likely to be released on bail from the custody and the past conduct and anticedents history of the person is such that no sooner he is released on bail, is likely to indulge into anti-social activities and in such case, detention order could be passed even few days prior to release of a person from the judicial custody.

7. The said proposition of law has been followed in several cases by Supreme Court and in the matter of Smt. Sashi Aggarwal Vs. State of U.P. and others, reported vide AIR 1988, SC, 596, the Hon'ble Supreme Court has observed in para - 11 that

" Every citizen in this country has the right to have recourse to law. He has the right to move the court for bail when he is arrested under the ordinary law of the land. If the State thinks that he does not deserve bail the State could

> oppose the grant of bail He cannot, however, be interdicted from moving the court for bail by clamping an order of detention. The possibility of the court granting bail may not be sufficient. Nor a bald statement that the person would repeat his criminal activities would be enough. There must also be credible information or cogent reasons apparent on the record that the detenu if enlarged on bail, would act prejudicially to the interest of public order. "

8. In view of the above stated proposition of law, if the facts stated in the grounds of detention are examined, no where it could be found that prior to arrest of the petitioner on 23.2.1999 in a criminal case, registered at Madhavpura Police Station vide CR. No. 20/99 dated 23.1.1999, the petitioner was found to have been indulging into anti-social activities within the purview of Section 2(c) of "PASA". Not only that, the grounds of detention are also devoid of any facts to suggest that the petitioner is having propensity to indulge into the anti-social activities and as such, the subjective satisfaction reached by the Detaining Authority to the extent that if he is released on bail, he is likely to continue his anti-social activities could be said as a rational conclusion drawn on the basis of facts.

9. For the reason stated above, I am constrained to hold that in the facts and circumstances of the present case, the impugned order suffers from the vice of non application of mind and could hardly be sustained.

10. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide, the other contentions raised in the petition.

11. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 11.3.1999 passed by the respondent No. 2 against the petitioner is hereby quashed and set aside. The petitioner Girdhar Rajesh @ Ramesh Mavjibhai Patel is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute to that extent.

Date : 22.02.2000. (A. K. Trivedi, J.)

PALLAV.